UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHAD SPRINGER d/b/a WHITE DOOR PHOTO,

Plaintiff,

- against -

PAX VENTURES, LLC and ALEXANDER XENOPOULOS,

Defendants.

Docket No. ____________

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Chad Springer d/b/a White Door Photo ("Mr. Springer" or "Plaintiff") by and through his undersigned counsel, as and for his Complaint against Defendants PAX Ventures, LLC ("PAX"), and Alexander Xenopoulos ("Mr. Xenopoulos", and together with PAX, "Defendants") hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action by Mr. Springer, a Brooklyn based photographer, for copyright infringement arising out of Defendants' unauthorized, knowing and willful reproduction, public display, and use of copyrighted photographs owned and registered by Plaintiff (the "Photographs") in Defendants' Manhattan restaurant chains – PAX Wholesome Foods and Europa Café. Mr. Springer seeks injunctive and monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq*.

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq*., and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over each of the Defendants because Defendants reside in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Mr. Springer, doing business as White Door Photo, is a professional photographer in the business of licensing his original photographic works to end users both directly and through various licensing agents, having a usual place of business at 80 Tuttle Road, Watchung, New Jersey 07069.

6. Upon information and belief, PAX Ventures, LLC is a corporation duly organized and existing under the laws of the State of New York, with its principal place of business at 1776 Broadway, Suite 1500, New York, New York 10019. At all times material hereto, PAX has operated and continues to operate chain restaurants in New York City under the names PAX Wholesome Foods and Europa Café.

7. Upon information and belief, Alexander Xenopoulos an individual with a business address at 1776 Broadway, Suite 1500, New York, New York 10019. Upon information and belief, at all times material hereto, Xenopoulos was and is the Chief Operating Officer of PAX, and owns, operates and/or otherwise controls PAX.

STATEMENT OF FACTS

8. Mr. Springer is, and at all relevant times has been, the author of the Photographs.

9. Mr. Springer is, and at all relevant times has been, the sole owner of all right, title and interest in and to the Photographs, including the copyrights thereto.

10. The Photographs were registered with Copyright Office and were given Copyright Registration Number VA0001858979, effective February 7, 2013.

11. In or about April 2008, Mr. Springer contracted with PAX as an independent contractor to take photographs of food and beverage products to be used by PAX in its restaurants, PAX Wholesome Foods and Europa Café, on the websites for those restaurants, in the menus for those restaurants, among other things. Mr. Springer provided PAX with an invoice and image license, which provided that Mr. Springer retained the copyright in the Photographs, and PAX was permitted to use the Photographs for a term of three (3) years. PAX paid the agreed-upon license fee. A true and correct copy of the first image license is attached hereto as Exhibit A.

12. From April 2008 through July 2010, Mr. Springer did some additional photo shoots of food and beverage products for PAX. After each shoot, Mr. Springer provided PAX with an invoice and image license that provided that Mr. Springer retained the copyright in such photographs, and PAX was permitted to use such photographs for a term of three (3) years. For each such invoice, PAX paid the agreed-upon license fee.

13. Prior to the expiration of the final image license, Mr. Springer contacted PAX regarding whether it was interested in updating its image library. In or about February 2013, Mr. Springer had an in-person meeting with Andy Huh and one of PAX's owners. Despite the fact that every single invoice Mr. Springer provided to PAX included an image license, PAX's owner complained that they did not know that Mr. Springer had been licensing the Photographs to them. Mr. Springer explained that he owned the copyright in the Photographs, and emphasized the importance of PAX renewing the image license in order to continuing using the Photographs.

14. Mr. Springer and PAX subsequently renegotiated the image license. Mr. Springer licensed 255 images for a reduced license fee of $5,100 for an additional term of

one (1) year from June 7, 2013 to June 7, 2014. On or about June 19, 2013, PAX paid the invoice to renew the image license. That image license provided that Mr. Springer retained the copyright in the Photographs, and permitted PAX to use the Photographs. Relevant portions of the invoice and image license for the June 7, 2013 to June 7, 2014 period are attached hereto as Exhibit B.

15. In or about May 27, 2014, Mr. Springer and PAX renewed the image license for an additional term of one (1) year. Again, Mr. Springer retained the copyright in the Photographs, and PAX was permitted to use the Photographs from June 7, 2014 to June 7, 2015. Relevant portions of the invoice and image license for the June 7, 2014 to June 7, 2015 period are attached hereto as Exhibit C.

16. In or about June 2015, Mr. Springer reminded PAX that its image license to continue using the Photographs expired on June 7, 2015 and that PAX needed to renew its license and pay the licensing fee to continuing using the Photographs.

17. After the expiration of the license on June 7, 2015, Defendants continued reproducing, publically displaying, and otherwise using the Photographs in the PAX Wholesome Food and Europa Café restaurants, on the websites for those restaurants, and in the printed menus for those restaurants, among other things.

18. After numerous requests by Mr. Springer for payment were ignored, Mr. Springer was forced to retain counsel, Robert Polsky, Esq., to send demand letters stating that PAX has to renew its license or cease using the Photographs.

19. On August 10, 2015, Mr. Xenopoulos responded to Mr. Polsky's demand, stating that "I want to first and foremost clarify that it is not my intent to avoid paying the licensing fee to White Door Photo." Mr. Xenopoulos then stated that he was away on a trip and that he "will

make sure payment will be issued that week." A true and correct copy of Mr. Xenopoulos' August 10, 2015 e-mail to Mr. Polsky is attached hereto as Exhibit D.

20. On or about August 28, 2015, PAX and/or Mr. Xenopoulos paid the fee to renew the license for the Photographs for an additional one (1) year term from June 7, 2015 to June 7, 2016. Again, the license provided that Mr. Springer retained the copyright in the Photographs. Relevant portions of the June 7, 2015 to June 7, 2016 invoice and image license are attached hereto as Exhibit E.

21. On May 6, 2016, Mr. Springer sent an e-mail to Mr. Xenopoulos advising him that PAX's latest license in the Photographs was scheduled to terminate in June 2016. Mr. Springer included an invoice to renew the image license for one year. A true and correct copy of Mr. Springer's May 6, 2016 e-mail to Mr. Xenopoulos, invoice and image license are attached hereto as Exhibit F.

22. Neither Mr. Xenopoulos nor anyone else from PAX or on behalf of PAX responded to Mr. Springer's May 6, 2016 e-mail.

23. On June 6, 2016, Mr. Springer sent a follow-up e-mail to Mr. Xenopoulos reminding him that the image license in all of the Photographs was to expire on June 7, 2016, and if PAX wanted to renew its image license and continue using the Photographs, it would have to pay the invoice. If PAX was not going to renew the image license, Mr. Springer demanded that PAX cease usage of all Photographs. A true and correct copy of Mr. Springer's June 6, 2016 e-mail to Mr. Xenopoulos is attached hereto as Exhibit G.

24. Again, neither Mr. Xenopoulos nor anyone else from PAX or on behalf of PAX responded to Mr. Springer's June 6, 2016 e-mail.

25. After the expiration of the image license on June 7, 2016, Defendants continued reproducing, publically displaying, and otherwise using the Photographs in the PAX Wholesome Food and Europa Café restaurants, on the websites for those restaurants, and in the printed menus for those restaurants, among other things.

26. On July 12, 2016, Mr. Springer sent another e-mail to Mr. Xenopoulos stating that PAX was still using the Photographs and was not licensed to do so. Mr. Springer stated that PAX had to pay the invoice or cease using the Photographs. A true and correct copy of Mr. Springer's July 12, 2016 e-mail to Mr. Xenopoulos is attached hereto as Exhibit H.

27. Having received no response again, Mr. Springer's counsel Robert Polsky, Esq. sent an e-mail to Mr. Xenopoulos on July 13, 2016 demanding payment of the invoice. Mr. Polsky followed up again via e-mail on July 21, 2016. True and correct copies of Mr. Polsky's e-mails to Mr. Xenopoulos are attached hereto as Exhibit I.

28. On July 21, 2016, Mr. Xenopoulos responded via e-mail to Mr. Polsky. Mr. Xenopoulos stated in no uncertain words: "[w]e have every intention of paying your client" and that "[he] will process your client's payment on Monday and send it out on Tuesday." A true and correct copy of Mr. Xenopoulos's July 21, 2016 e-mail to Mr. Polsky is attached hereto as Exhibit J.

29. However, payment was never made that next week, nor at any time after Mr. Xenopoulos promised payment.

30. On August 23, 2016, Mr. Springer's new counsel Scott Sholder, Esq. sent a demand letter via Federal Express and e-mail to Mr. Xenopoulos advising him that PAX's use of the Photographs beyond the license term without renewing the license constituted copyright infringement, and offered him one last chance to enter into a one-year license renewal. A true

and correct copy of Mr. Sholder's August 23, 2016 Demand Letter is attached hereto as Exhibit K.

31. Neither Mr. Xenopoulos nor anyone else from PAX responded to the August 23, 2016 letter from Mr. Springer's counsel, and PAX has not paid any license fee to continue to reproduce, publically display, and otherwise use the Photographs beyond the expiration of the last license term.

32. Despite their knowledge that PAX has not paid the demanded licensing fee and that Defendants no longer have a license to reproduce, publically display and otherwise use the Photographs, Defendants are still using the Photographs in the PAX Wholesome Food and Europa Café restaurants, on the websites for those restaurants, and in the printed menus for the restaurants, among other things.

FIRST CLAIM FOR RELIEF
(DIRECT COPYRIGHT INFRINGEMENT)

33. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 to 32 herein.

34. Defendants have infringed Plaintiff's copyright in the Photographs by reproducing, publically displaying, and otherwise using the Photographs *inter alia* in the PAX Wholesome Food and Europa Café restaurants, on the PAX Wholesome Food and Europa Café websites, and on the menus for PAX Wholesome Food and Europa Café without Paintiff's authorization or consent and beyond the end of the license term set forth herein.

35. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

36. Given their refusal to renew the license in the Photographs despite numerous written demands by Mr. Springer and his counsel, and Mr. Xenopoulos' written acknowledgement that the license fee was owed and would be paid, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

37. As a direct and proximate cause of the infringement by Defendants of Plaintiff's copyrights and exclusive rights under copyright, Plaintiff is entitled to his damages and Defendants' infringing profits pursuant to 17 U.S.C. § 504(b) for each infringement.

38. Alternatively, Plaintiff is entitled to statutory damages up to $150,000 per work infringed for Defendants' willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

39. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

40. Defendants' conduct in continuing to publically display, reproduce and otherwise use the Photographs beyond the end of the license term, as described herein, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to injunctive relief prohibiting Defendants and those acting in concert with them or at their direction from further infringing Plaintiff's copyrights and exclusive rights under copyright.

SECOND CLAIM FOR RELIEF
(VICARIOUS COPYRIGHT INFRINGEMENT)

41. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 to 40 herein.

42. Upon information and belief, Mr. Xenopoulos, as the Chief Operating Officer of PAX. had the right and ability to supervise or control the infringing activities complained of herein.

43. Mr. Xenopoulos declined to exercise his right and ability to supervise or control the infringing activities by failing to pay the demanded license fee, and permitting the continued reproduction, public display and use of the Photographs beyond the expiration of the license term.

44. Upon information and belief, Mr. Xenopoulos received a financial benefit from the infringing activities.

45. Mr. Xenopoulos' conduct, as alleged herein, constitutes vicarious infringement of Plaintiff's registered copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

46. Given Defendants' refusal to renew the license in the Photographs despite numerous written demands by Mr. Springer and his counsel, and Mr. Xenopoulos' written acknowledgement that the license fee was owed and would be paid, the foregoing acts of infringement by Mr. Xenopoulos have been willful, intentional and purposeful, in disregard of and with indifference to the rights of Plaintiff.

47. As a direct and proximate cause of the infringement by Mr. Xenopoulos of Plaintiff's registered copyright and exclusive rights under copyright, Plaintiff is entitled to his

damages and Defendants' infringing profits pursuant to 17 U.S.C. § 504(b) for each infringement.

48. Alternatively, Plaintiff is entitled to statutory damages up to $150,000 per work infringed for its willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

49. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

50. Mr. Xenopoulos' conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to injunctive relief prohibiting Mr. Xenopoulos, PAX and those acting in concert with them or at their direction from further infringing Plaintiff's copyrights and exclusive rights under copyright.

THIRD CLAIM FOR RELIEF
(CONTRIBUTORY COPYRIGHT INFRINGEMENT)

51. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 to 50 herein.

52. Upon information and belief, Mr. Xenopoulos authorized the infringement, or had knowledge of such infringing activities and induced, caused or materially contributed to such activities.

53. Indeed, Mr. Xenopoulos received not only written warnings from Mr. Springer that the license was set to expire, but Mr. Springer and his attorneys also sent numerous emails and letters to Mr. Xenopoulos advising him when the license expired, demanding payment, and demanding that Defendants cease their use of the Photographs if they were not going to renew

their license. Moreover, Mr. Xenopoulos acknowledged in writing that the license fee was owed and promised to pay it.

54. Mr. Xenopoulos' conduct, as alleged herein, constitutes contributory infringement of Plaintiff's registered copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

55. Given Defendants' refusal to renew the license in the Photographs despite numerous written demands by Mr. Springer and his counsel, and Mr. Xenopoulos' written acknowledgement that the license fee was owed and would be paid, the foregoing acts of infringement by Mr. Xenopoulos have been willful, intentional and purposeful, in disregard of and with indifference to the rights of Plaintiff.

56. As a direct and proximate cause of the contributory infringement by Mr. Xenopoulos of Plaintiff's registered copyright and exclusive rights under copyright, Plaintiff is entitled to his damages and defendant's infringing profits pursuant to 17 U.S.C. § 504(b) for each infringement.

57. Alternatively, Plaintiff is entitled to statutory damages up to $150,000 per work infringed for its willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

58. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

59. Mr. Xenopoulos' conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to injunctive relief prohibiting Mr. Xenopoulos,

PAX and those acting in concert with them or at their direction from further infringing Plaintiff's copyrights and exclusive rights under copyright.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants PAX and Mr. Xenopoulos be adjudged to have infringed upon Plaintiff's registered copyright in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Defendants, and their officers, directors, employees, agents, representatives, affiliates, subsidiaries, distributors, licensees and all persons or entities acting in concert or participation with any Defendant or at their direction, be enjoined from copying, reproducing, distributing, adapting, or publicly displaying Plaintiff's Photographs, pursuant to 17 U.S.C. § 502;
3. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendants' profits, gains or advantages of any kind attributable to Defendants' infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to $150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendants as a result of its unlawful conduct;
5. That Plaintiff be awarded his attorneys' fees, full costs, and disbursements in this action pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Ridgewood, New York
October 27, 2016

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